

ETIC Dig Law Update

August 12th, 2016

Time line goals: John Fitzpatrick, Aimee Grmoljez and Doug Hardy have split up the consensus points and are working on the codification. Their goal is to complete their parts and merge them into a single file to review with Sonja on the 16th of this month. Sonja hopes to have a rough draft out for review at our next scheduled meeting of the stakeholders on September 30th, here in Helena.

The Safe Excavation Law Study Group meeting August 12th 2016. The meeting started at 10:00 am at the Central Montana Electric Power Cooperative office at 501 Bay Dr. in Great Falls.

There was a considerable amount of time spent discussing emergency locates. How we prevent abuse, response requirements and the definition.

There was consensus that we should leave the definition of emergency it as is in the current statute.

There is consensus that existing language "as soon as practical" for emergency locates should remain unchanged.

During the discussions, it was recommended that we use Montana Utility Coordinating Council as a place to ask for help when companies continually do not show up in a timely manner for emergency locates. At this time we don't feel we need to add any language to the statute to deal with this issue.

There is consensus that remedies in existing statutes are adequate regarding potential call in of emergency locates for non-emergency conditions.

Following extensive discussion regarding 48 hours vs 2 days, there was near consensus to leave as is, with requests for time to talk to constituents prior to full consensus agreement. An earlier consensus, #8 shown below allows a contractor to dig early if all locates are completed and confirmed prior to the work to begin date as shown on the ticket.

8. **There is consensus** that notwithstanding emergency locates, digging prior to the work to begin date on the call ticket (needs to coincide with the statute time, IE 12:01 AM) or the confirmation of facilities located by affected buried facility owners, does not constitute obtaining a locate.

Two full business days,

Current,

(1) "Business day" means any day other than Saturday, Sunday, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

We have consensus that keeping holidays and adding language (See counties county language to be consistent) as to the observed holiday time IE if Christmas falls on a weekend what day is observed. *Note see ND language on 1-1-216 in definitions.*

There is consensus contingent upon constituent discussion prior the next stakeholders meeting, If excavation has not occurred within the initial thirty days of the locate, the excavator shall request that the facility be relocated before excavating. Upon the third locate request at the same excavation site where no excavation has occurred after the initial two locates, the excavator is responsible for reasonable costs associated with relocating facilities in that location. If the issue of whether excavation has occurred is disputed for purposes of this section, the excavator bears the burden of proof that excavation has occurred or must demonstrate circumstances beyond their control delayed the excavation.

There is consensus that If excavation will continue more than 30 days beyond the date a locate is due by, the excavator shall not continue excavation until relocation has been called in and been completed.

There is consensus that the word "maintain" the mark be replaced with the word "preserve" the mark.

There is consensus that Fines in matrix shall double if the underground facilities owner is not a member of a one call as described in 69-4-502 subsection 2

There is consensus that the definition of maximum area to located per ticket for municipalities be expanded to include Rural Water and Sewer districts. (Used in consensus items 20 and 23)

There is consensus to include additional language in the excavation definition that allows farmers, landowners, homeowners and occupants to do the annual activates for necessary for farming and gardening

(4) (a) "Excavation" means an operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means or use of any tools, equipment, or explosives. The term includes but is not limited to grading, trenching, digging, ditching, drilling, auguring, tunneling, scraping, and cable or pipe plowing and driving.

(b) Excavation does not include;

- Surface road grading maintenance or road or ditch maintenance that does not change the original road or ditch grade or flow line.
- Plowing, cultivating, planting, harvesting, and similar operations in connection with agricultural activities, unless any of these activities disturbs the soil to a depth of eighteen inches [45.72 centimeters] or more or are in previously undisturbed soil.
- Homeowners, occupants gardening and landscaping unless it disturbs the soil to a depth of twelve inches [30.48 centimeters] or more or is in previously undisturbed soil.

Note: One item that we wanted to get back to was the need for positive response.